

ORDINANCE NO. 2008-07

An Ordinance Relating to Standards for the Delivery of Indigent Defense Services:

WHEREAS, the Washington Legislature has mandated that counties adopt a legal representation plan that addresses standards for the delivery of indigent defense services (RCW 10.101.030); and

WHEREAS, Ferry County seeks to adopt indigent defense standards;

Now, therefore,

BE IT ENACTED by Ferry County, through its Board of County

Commissioners:

1. Contract

All indigent defense services shall be either paid on an hourly basis determined by the judicial officer in the particular case, or pursuant to a written contract between the indigent defense attorney(s) and the County, with input, approval and/or ratification from judicial officers.

2. Compensation

All indigent defense attorneys shall be reasonably compensated, taking into consideration the experience and training of the attorney.

Contracts should provide for extraordinary compensation for cases such as death penalty, homicide and "three strikes" cases, or those requiring an extraordinary amount of time and labor.

Attorneys who have a conflict of interest shall not be required to select or compensate conflict counsel.

3. Duties and Responsibilities of Counsel

All indigent defense contracts shall require that services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable Washington State Bar Association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client.

4. Malpractice Insurance

Indigent defense attorneys shall maintain malpractice insurance with agreed-upon policy limits.

5. Caseload Limits and Types of Cases.

Caseloads should allow each attorney to give each client the time and effort necessary to ensure effective representation. No attorney or firm rendering indigent defense services shall accept workloads that interfere with the rendering of reasonable and quality representation. An attorney should not allow his or her private law practice to interfere with the competent representation of indigent defendants.

The caseload standards adopted by the Washington State Bar Association, Washington Defenders Association and/or American Bar Association shall be considered as guidelines. A case is defined as the filing of a document wherein a person is designated a defendant or respondent and an attorney is appointed by the court. Adjustments may be made wherein a full case is not attributed in the following non-exclusive circumstances:

A bench warrant is issued before a case is resolved;
Probation violation, extradition, restitution hearings, etc., that do not require a full-blown hearing;
Diversion, continuances for dismissal, misdemeanor compromises or similar dispositions;
Drug court, disposition to a re-licensing program, deferred prosecution or other similar procedure;
Early dismissal by a prosecutor based on lack of evidence or standard plea offers, based on the prosecutor's charging and plea bargaining practices or other reasons that dispose of a case without extensive litigation; or
Withdrawal of counsel at an early stage of the case, due to conflict of interest or other reasons.

Attorneys providing indigent defense services, judicial officers and county commissioners should regularly monitor caseloads, including private practice, and attorneys on contract submit at least quarterly reports. The above-mentioned parties should not hesitate to confer and craft a remedy for dealing with caseload issues that materially affect representation of an indigent client. Excessive continuances, missed court dates, client complaints, etc. shall be addressed as soon as practicable.

6. Services Other Than Counsel

Reasonable compensation for expert witnesses, investigators and other services necessary for an adequate preparation and presentation of the defense case shall be provided pursuant to Criminal Rule 3.1(f).

7. Administrative Expenses

Attorneys shall be responsible for paying all administrative expenses of their office or firm not otherwise provided for in these standards or in a contract. Such costs may include law libraries, financial accounting, case management systems and other costs incurred in the day-to-day management of the contract.

Attorneys shall maintain an office to maintain confidential meetings with clients.

8. Reports of Attorney Activity and Vouchers

Attorneys on contract shall maintain a case reporting and management information system which includes the number and type of cases, and disposition of each case. Any such system shall be maintained independently from client files so as to disclose no privileged information. At a minimum, quarterly reports shall be submitted.

A standardized voucher form shall be used by attorneys seeking payment for services rendered. Payment should be made at times agreed to by the parties, without regard to the number of cases closed in the period.

9. Training

Attorneys should participate in at least seven (7) hours of regular training programs annually in areas relating to their indigent defense practice.

Every attorney providing counsel to indigent accused should take the opportunity to attend courses that foster trial advocacy skills and to review professional publications and tapes.

10. Supervision

Each attorney or firm providing indigent defense services should provide one full-time supervisor in the office qualified under these guidelines to try Class A felonies unless excused by the judges.

11. Monitoring and Evaluation of Attorneys

Contracts for indigent defense services will be systematically monitored and evaluated. Supervision and evaluation efforts should include review of time and caseload records and at least annual conferences with the Indigent Defense Standards Committee.

12. Substitution of Attorneys or Assignment of Contracts

The attorney or firm engaged by the respective County to provide indigent defense services shall not subcontract with another firm or attorney to provide representation without prior written approval and shall remain directly involved in the provision of representation. If the contract is with a firm or office, the respective County or judicial officer may request the names and experience levels of those attorneys who will actually be providing the services, to ensure they meet minimum qualifications. Any indigent defense contract shall address the procedures for new counsel taking over upon the conclusion of the contract to ensure a smooth transition upon non-renewal or termination, with the minimal possible detriment to the indigent client.

13. Limitations on Private Practice for Contract Attorneys

New contracts for indigent defense attorneys with private attorneys or firms may set limits on the number of private or special appointment cases which can be accepted by the contracting attorney or provide that the indigent defense contract be a priority over private or special appointment caseloads. An attorney or firm rendering indigent defense services shall not allow his or her private practice or accept special appointments on matters such as death penalty, homicide, three strikes, sexually violent predator actions, and so forth, to diminish his or her ability to represent indigent clients he or she is obligated to serve by any contract.

14. Qualifications of Attorneys

A. In order to assure that indigent accused receive effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services must meet the following minimum professional qualifications:

- (1) Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

(2) Complete the hours of continuing legal education within each calendar year as set forth in Section 9.

B. Trial attorney's qualifications according to severity or type of case:

(1) Death Penalty Representation. Each attorney acting as lead counsel in a death penalty case shall meet the following requirements:

a. The minimum requirements set forth in Section 14(A);

and

b. At least five years criminal trial experience; and

c. Have prior experience as lead counsel in no fewer than ten jury felony trials which were tried to completion; and

d. Has served as counsel in at least one completed jury trial in which the death penalty was sought; and

e. Has completed at least one seminar containing a death penalty section.

(2) Adult Felony Cases – Class A. Each attorney representing a defendant accused of a Class A felony shall meet the following requirements:

a. Minimum requirements set forth in Section 14(A); and

b. Has practiced law for one year and has been trial counsel in five felony cases that have been submitted to a jury.

(3) Adult Felony Cases – All Other Felonies, Probation or Parole Revocation. Each attorney representing a defendant accused of a Class B Felony or a Class C Felony, or involved in a probation or parole revocation hearing shall meet the following requirements:

a. Minimum requirements set forth in Section 14(A); and

b. Either:

- i. Has served one year as a prosecutor; or
 - ii. Has served one year as appointed counsel for indigent defendants; or
 - iii. Has been trial counsel along in two criminal cases that have been submitted to a jury; and
- c. Shall be accompanied at his or her first felony trial by a supervisor.

(4) Juvenile Cases. Each attorney representing a juvenile accused shall meet the minimum requirements set forth in Section 14(A).

(5) Misdemeanor Cases and Mental Commitment Hearings. Each attorney representing a defendant involved in a matter concerning a gross misdemeanor or condition of confinement shall meet the requirements as outlined in Section 14(A).

(6) Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:

- a. The minimum requirements as outlined in Section 14(A);
- and
- b. Attorneys handling deprivation/termination hearings shall have six months dependency experience or six months comparable experience regarding child custody issues.

C. Legal Interns.

- 1. Legal interns must meet the requirements set out in Admission to Practice Rule (APR) 9.
- 2. Legal interns shall receive training pursuant to APR 9.

15. Disposition of Client Complaints.

The following procedure shall be utilized for responding to client complaints: Complaints should first be directed to the attorney, firm or agency which provided representation. If the attorney and client cannot resolve the complaint amicably, the attorney shall ask the court to withdraw and substitute new counsel. The complaining client should be informed as to the disposition of his or her complaint within a reasonable period of time. If the client feels dissatisfied with the evaluation and response received, he or she should be advised of the right to complain to the Washington State Bar Association.

16. Cause for Termination or Removal of Attorney

Contracts for indigent defense services should include the grounds for termination of the contract by the parties. Termination of an attorney's contract should only be for good cause. Good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; the willful disregard of the standards herein addressed; or violations of the Rules of Professional Conduct (RPCs).

The representation in an individual case establishes an inviolable attorney-client relationship. Removal of counsel from representation, therefore, should not occur over the objection of both the attorney and the client.

17. Non-Discrimination.

Neither the respective County, in its selection of an attorney, firm or agency to provide indigent defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital or military status, sex, sexual orientation or disability.

18. Guidelines for Awarding Defense Contracts.

The County should award contracts for indigent defense services only after determining that the attorney or firm chosen can meet accepted professional standards and the qualifications outlined in Section 14. Under no circumstances will a contract be awarded on the basis of cost alone. Attorneys or firms seeking contracts for indigent defense services must demonstrate their ability to meet these standards.

Prosecutors and law enforcement officers shall not select the attorneys who will provide indigent defense services.

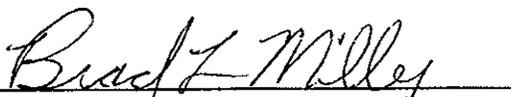
19. Purpose of Standards.

Adoption of this ordinance shall in no way be construed to create a civil penalty or cause of action against either the attorney(s) or the County.

PASSED this 18th day of August, 2008.

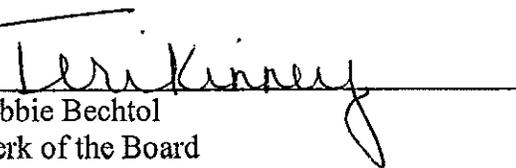
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ATTEST:


for Debbie Bechtol
Clerk of the Board